IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

A.O. No.98 of 2002.
(Under section 173 of Motor Vehicles Act)

District : Dehradun

U.P. State Road Transport Corporation,
Through Regional Manager, Dehradun,
……..…Appellant,

Versus

1. Sri Raja Ram,
   S/o Late Shri Chedi Lal,
   R/o 249, Lakhibagh, Dehradun,

2. National Insurance Company Ltd.,
   through Divisional Manager,
   29, Rajpur Road, Dehradun.
   ……..Respondents.

Sri Amar Nath Sharma, Advocate for appellant,
Sri Ramji Srivastava, Advocate for respondents.

August 27, 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal is against judgment and order dated 5.2.2002 passed by Sri R.R. Agrawal, Motor Accident Claims Tribunal/ADJ/3rd Fast Track Court, Dehradun in M.A.C. petition No.199 of 2000 whereby he awarded Rs.3,80,000/- as compensation to the claimant/injured Raja Ram against the appellant.

Briefly, the facts of the case are that on 28.5.2000 when Sri Raja Ram riding on the pillion of a motor cycle driven by one Moti Lal reached Saharanpur Road, bus No.UP 32T-1724 belonging to the appellant tried to overtake a Vikram four-wheeler in a rash and negligent manner and very high speed. In this attempt the bus came on wrong side and hit the motor cycle. Its driver Mohan Lal fled away leaving the bus on the spot. Injured Raja Ram had six fractures in his right leg below the knee and had to remain in Doon Hospital from 28.5.2000 to 3.8.2000 and thereafter he was operated upon and

remained admitted in Kohli Nursing Home since 2.10.2000 and his leg shortened by 4 to 5 inches. The injured petitioner alleged that he became permanently disabled and could not do his business of Food Stall from which he was earning about Rs.4000/- per month. For loss of earning, pain suffering etc. he claimed a total compensation of Rs.8,90,000/-

The National Insurance Company, insurer of the motor cycle, in its reply stated that no negligence has been shown on the part of motor-cyclist and as such the claim petition is not maintainable against it. The O.P. No.2 the U.P.S.R.T.C. took the case that the motorcyclist wanted to overtake a truck in a wrong manner with fast speed but dashed against that truck, the pillion rider fell down balance of the motor cycle was lost, whereafter the leg-guard of the motor cycle struck against the bus in question. The UPSRTC asserted that the pillion rider did not receive any injury while the leg of the motor-cycle driver came under the motor cycle, who sustained injuries thereby. It was inter alia pleaded that the bus driver was not at fault and at any rate the motorcyclist was guilty of contributory negligence. The learned Tribunal framed separate issues for consideration of rash and negligent act of both the colliding vehicles, for age and income of the injured claimant, non joinder of owner and driver of motor cycle No.UP 07C-7551, permanent disablement and amount of compensation and its entitlement from which of the opposite parties. On a consideration of oral and documentary evidence, by a detaileld discussion and rejecting the defence version that the motorcyclist had hit the bus on the back side, the Tribunal found that the accident was caused by rash and negligent driving of the bus, the injured was aged 32 years and assumed his earning Rs.2,500/- as against Rs.4000/- as claimed by the petitioner, the petition was not bad for non-joinder of motor cycle owner or driver. It was further held that the permanent disability of the injured to the extent of 50% is proved by the oral and documentary evidence in the shape of certificate issued by the C.M.O.

The learned Tribunal awarded Rs.70,000/- on the basis of medical bills filed by the claimant, Rs.30,000/- for loss of earning during treatment, Rs.2,55,000/- for loss of income by applying the multiplier 17, and finally an amount of Rs.25,000/- hardships, mental and physical discomfort on account of shortening of leg preventing him from walking running and enjoying life. All this made a total of Rs.3,80,000/- which was awarded by the learned Tribunal to the claimant.

In the appeal before us, it has been pleaded that the compensation awarded is arbitrary and excessive, the judgment is based on extraneous considerations, repeating the arguments made before the learned lower court and properly discussed by it, it has again been urged that it was a case of contributory negligence and the disability of the claimant was temporary one, the monthly income of the deceased has been wrongly assumed to be Rs.2500/- per month and applied multiplier to it, and the award made on various counts was erroneous.

We have heard the learned counsel for both the parties and have perused the impugned judgment. The fact that the bus driver ran away leaving the bus at the spot, has not been denied before us. There is evidence of injured Raja Ram as PW1 and driver of motor cycle Moti Lal on the record and as mentioned by the learned lower court, both have stated that by the stroke of bus both of them fell down and got injuries, Raja Ram underwent operation of his right leg in which a nail was fixed and thereafter grafting was done and his leg has been shortened. They also remained firm on the point of manner of accident in their cross examination. Moti Lal has also filed copy of his driving license. Both these witnesses have stated that at the time of overtaking Vikram and the present accident, the speed of the bus coming from Saharanpur side was between 60-70 KMs. This speed in the city area is definitely a fast speed. The learned lower court has rightly rejected the story told by the defence through their witness.

Mohan Lal, who could not stand the rest of cross examination when he stated that the motor cycle suddenly came in front of the bus and he could not visualize it beforehand, which supported the claimant's case that it was a head on collision and the story put forth by the defence was cooked for defence purposes only. He also admitted that a case was registered against him and he himself did not lodge the report. This circumstance and police investigation also spoke against the defence. Therefore, there is no force in the argument that accident took place due to any negligence of motor-cyclist or it was a contributory negligence.

The other objection is regarding the quantum of compensation, which also bears no force in our opinion. In the absence of documentary proof, the learned Tribunal has assumed the income of the injured at Rs.2,500/- p.m. instead of Rs.4000/- as claimed by the petitioner in the petition and in his statement. This assumption of income cannot in any way be said to be on the higher side which comes to Rs.84/- per day as the claimant used to sell food on theli the crowdy place of Kutchery. Further, the learned lower court has held the permanent disability of the claimant on the basis of the certificate of Chief Medical Officer, who is competent authority to issue such certificates and awarded compensation for loss of income during his detention in hospitals. We also find no fault with the finding of the learned Tribunal regarding compensation for loss of enjoyment of life, mental and physical pain and loss of earning capacity due to shortening of his right leg. The learned Tribunal has rightly held that the compensation in case of permanent disability may be higher than in case of death. In death cases, with the end of life, everything ends with that person, but with permanent disability, the person has to live with all his miseries, depending on others' mercy in his daily routine works, and without enjoying life in a normal way and sometime bearing the rejection of society or people around. The learned lower Court has in support of this, has rightly taken guidance from the view expressed by the High Court in the case of Sushila

Pandey vs. New India Assurance Company Ltd., A.I.R. 1983 Alllahabad 69. Therefore, we are of the opinion that this appeal has no force and deserves to be dismissed.

The appeal is hereby dismissed. No order as to costs. The amount of compensation deposited by the appellant in this Court, shall be remitted to the learned Tribunal concerned for disbursement to the claimant.

(B.S. Verma, J.) (P.C. Verma, J.)

P. Singh/27.8.04